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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 BEAR, LLC, a Minnesota limited
11 liability company,

12 Plaintiff,

13 v.

14 MARINE GROUP BOAT WORKS,
15 LLC, a California limited liability
16 company; UNIVERSAL STEEL
17 FABRICATION, INC., a California
18 corporation,

19 Defendants.

20 AND RELATED COUNTERCLAIMS

) Case No. 14-cv-2960-BTM-BLM

) **IN ADMIRALTY**

) **ORDER GRANTING PLAINTIFF'S**
) **MOTION FOR ENTRY OF**
) **DEFAULT JUDGMENT [ECF No.**
) **149.]**

21 Pending before the Court is Plaintiff Bear, LLC's Motion for Entry of Default
22 Judgment against Defendant Universal Steel Fabrication, Inc. ("USF"). (Pl.'s Mot. for
23 Default J., ECF No. 149.) For the reasons discussed below, Bear's motion is
24 **GRANTED.**

25 **I. FACTUAL BACKGROUND**

26 On May 6, 2014, while on its way to San Diego, Bear's 102-foot yacht, the
27 *Polar Bear*, struck the submerged Zuniga jetty at the entrance to the San Diego Harbor,
28 damaging the bottom of the hull and causing water to leak in. (First Amended
Complaint ("FAC"), ECF No. 65, ¶ 9.) The *Polar Bear* arrived at Defendant Marine

1 Group Boat Works, LLC (“MGBW”) on May 7, 2014 for repairs. (Id. at ¶ 12.) After
2 the vessel was hauled out it was determined that the bottom of the hull, port and
3 starboard of the keel had been substantially deformed from running aground. (Id. at ¶
4 21.) The repairs would include both grinding and welding the hull. (Id.)

5 On May 29, 2014, MGBW retained USF to perform the repairs, including
6 welding the steel pieces into place on the *Polar Bear*. (Id. at ¶ 26.) USF failed to take
7 adequate safety precautions given the risk of a fire arising from the type of work being
8 performed. (Id. at ¶¶ 31–34.) On June 19, 2014, while employees of USF were
9 grinding and cutting with a welding torch on the port side of the *Polar Bear*, the vessel
10 caught fire resulting in a total loss. (Id. at ¶ 35.) Bear sustained a loss of \$14,313,256,
11 the *Polar Bear*’s fair market value at the time of the fire. (Id. at ¶ 36.)

12 **II. PROCEDURAL BACKGROUND**

13 Plaintiff initiated this action on December 16, 2014 against MGBW and USF.
14 (ECF No. 1.) USF was served on December 29, 2014, in accordance with Federal Rule
15 of Civil Procedure 4(h). (ECF No. 5.) On May 23, 2017, the Clerk entered default
16 against USF. (ECF No. 140.) On June 20, 2017, Plaintiff filed the motion at issue,
17 seeking a default judgment against USF.

18 **III. JURISDICTION**

19 When considering whether to enter a default judgment a court has “an
20 affirmative duty to look into its jurisdiction over both the subject matter and the
21 parties.” *In Re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). Plaintiff brought this action
22 under federal maritime law, permitting the Court to exercise subject matter jurisdiction
23 over this case. The Court relies on the pleadings to find that it has personal jurisdiction
24 over USF. *See BNSD Ry. Tyrrell*, __ U.S. __, 137 S.Ct. 1549, 1558 (2017) (“[A] court
25 may assert general jurisdiction over foreign (sister-state or foreign-country)
26 corporations to hear any and all claims against them when their affiliations with the
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1 State are so ‘continuous and systematic’ as to render them essentially at home.”)
2 (internal citations omitted).

3 **IV. STANDARD**

4 **A. Default Judgment**

5 Entry of default judgment is governed by Federal Rule of Civil Procedure 55(b)
6 and is left to the trial court’s sound discretion. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092
7 (9th Cir. 1980). After default has been entered, the well-pleaded factual allegations of
8 the complaint, except those relating to the amount of damages, shall be taken as true.
9 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). In determining
10 damages, the court can rely on evidence submitted by the plaintiff or may conduct a
11 full evidentiary hearing. Fed. R. Civ. P. 55(b)(2). A judgment by default shall not
12 award damages that are different from or exceed the amount requested in the plaintiff’s
13 complaint. Fed. R. Civ. P. 54(c).

14 Factors which may be considered by courts in exercising their discretion as to
15 whether to enter default judgment include: (1) the possibility of prejudice to plaintiff;
16 (2) the merits of plaintiff’s substantive claims; (3) the sufficiency of the complaint; (4)
17 the sum of money at stake in the action; (5) the possibility of a dispute concerning
18 material facts; (6) whether the default was due to excusable neglect; and (7) the strong
19 policy underlying the Federal Rules of Civil Procedure favoring decisions on the
20 merits. *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986).

22 **1. Eitel Factors**

23 The *Eitel* factors weigh in favor of granting default judgment. USF was properly
24 served but has failed to respond to the FAC. Without entry of judgment against USF,
25 Plaintiff will not be able to recover from it. There is no evidence that the default was
26 due to excusable neglect since USF’s president and owner, Claudio Rivas, was deposed
27 in late December 2015, putting USF on notice of this action. The damages Bear seeks
28 are reasonable given that USF’s negligence resulted in the *Polar Bear*’s total loss.

1 Therefore, whether default judgment is appropriate turns on the merits and sufficiency
2 of Plaintiff's claims.

3 **2. Sufficiency and Merits of Claims**

4 "Upon entry of a default judgment, facts alleged to establish liability are binding
5 upon the defaulting party" *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).
6 The second and third *Eitel* factors require a court to assess the substantive merits of a
7 plaintiff's claims and the sufficiency of its pleadings. *Eitel*, 782 F.2d at 1472. The Ninth
8 Circuit has suggested that these factors require a plaintiff's allegations to "state a claim
9 on which the [plaintiff] may recover." *Danning*, 572 F.2d at 1388.

10 To state claim for negligence, a plaintiff must demonstrate: (1) the existence of a
11 legal duty to use due care; (2) a breach of such legal duty; (3) causation; and (4)
12 damages. *Merrill v. Navegar, Inc.*, 26 Cal.4th 465, 500 (2001). A defendant's duty of
13 care is a prerequisite to any claim for negligence. *Nymark v. Heart Fed. Sav. & Loan*
14 *Ass'n*, 231 Cal. App. 3d 1089, 1095 (1991). "Absent a duty, the defendant's care, or
15 lack of care, is irrelevant." *Software Design & Application, Ltd. V. Hoefer & Arnett,*
16 *Inc.*, 49 Cal. App. 4th 472, 482 (1996). Unlike the factual issues of breach and
17 causation, whether a defendant owes a plaintiff a duty of care is a question of law for a
18 court to decide. *Cabral v. Ralphs Grocery Co.*, 51 Cal.4th 764, 771 (2011). "The legal
19 duty of care may be of two general types: (a) the duty of a person to use ordinary care
20 in activities from which harm might reasonably be anticipated, or (b) an affirmative
21 duty where the person occupies a particular relationship to others." *McGettigan v. Bay*
22 *Area Rapid Transit Dist.*, 57 Cal. App. 4th 1011, 1016–17 (1997).

23 Plaintiff alleges that a duty of care arose from the performance of hot work that
24 required Defendants, including USF, to take adequate safety precautions. (FAC ¶ 31.)
25 It is alleged that on June 19, 2014, USF employees failed to take adequate safety
26 precautions while grinding and cutting with a welding torch on the port side of the
27 *Polar Bear*. (Id. at ¶¶ 32–35.) The grinding and cutting caused a fire which engulfed
28 the *Polar Bear* and rendered it a total loss. (Id. at ¶ 35.) These allegations are

1 sufficient to state a negligence claims. Thus, the Court finds that default judgment
2 should be granted.

3 **3. Damages**

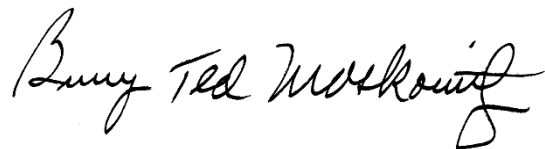
4 Default judgment may be entered “without a hearing on damages when the amount
5 it capable of ascertainment from definite figures contained in the documentary evidence
6 or in detailed affidavits.” *Taylor Made Golf Co. v. Casten Sports*, 175 F.R.D. 658, 661
7 (S.D. Cal. 1997) (citing *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*,
8 722 F.2d 1319, 1323 (7th Cir. 1983)). Here, Bear requests that the Court award it
9 \$5,113,256, the difference between the market value of the *Polar Bear* on June 19, 2014,
10 \$14,313,256, and the amount it was able to recover in settlement from MGBW, \$9.2
11 million. See (Decl. of Robert C. Wright in Supp. of Pl.’s Mot. for Default J. (“Wright
12 Decl.”), ¶ 11; Decl. of H.M. Pliske in Supp. of Pl.’s Mot. for Default J. (“Pliske Decl.”),
13 ¶ 14.) Accordingly, the Court finds that Bear is entitled to an award of \$5,113,256.

14 **V. CONCLUSION**

15 For the reasons discussed above, Plaintiff’s motion for default judgment is
16 **GRANTED**. The Court awards Plaintiff \$5,113,256 in damages. The Clerk shall
17 enter judgment in favor of Plaintiff and against Defendant USF in the amount of
18 \$5,113,256.

19 **IT IS SO ORDERED.**

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21 Dated: December 11, 2017



22 _____
23 Barry Ted Moskowitz, Chief Judge
24 United States District Court
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